STATE OF MICHIGAN

COURT OF APPEALS

KEITH LOEWENGRUBER,

Plaintiff-Appellant,

v

UNIVERSITY OF MICHIGAN HEALTH SYSTEMS,

Defendant-Appellee.

UNPUBLISHED
July 26, 2002

No. 231377
Court of Claims
LC No. 99-017296-CM

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right from an order granting summary disposition under MCR 2.116(C)(7) because the claim was barred by the statute of limitations. We affirm.

On November 1, 1996, plaintiff went to the University of Michigan Hospital complaining of vision problems in his right eye. A physician determined that steroid treatment was not indicated and he was discharged the following day. Plaintiff alleges that he now has permanent vision problems caused by the failure to administer a steroid treatment.

The limitation period for a malpractice action is two years, MCL 600.5805(5) [formerly MCL 600.5805(4)], and in this case it would expire on November 2, 1998. Under MCL 600.2912b(1), plaintiff was required to give defendant written notice of his intent to bring a malpractice action "not less than 182 days before the action is commenced." Plaintiff sent defendant a notice of intent in October 1998. Defendant's October 16, 1998 receipt of the notice of intent operated to toll the limitation period for 182 days, until April 17, 1999. MCL 600.5856(d); *Omelenchuk v City of Warren*, 461 Mich 567, 569 n 5, 575; 609 NW2d 177 (2000). On April 9, 1999, plaintiff filed a complaint in Washtenaw Circuit Court, but service was apparently never attempted and the case was eventually dismissed. Plaintiff filed the complaint in this Court of Claims case on June 4, 1999.

The trial court granted summary disposition under MCR 2.116(C)(7) on the basis that the complaint in the Court of Claims action was filed after the expiration of the limitations period, rejecting plaintiff's argument that the limitations period was tolled on April 9, 1999, when he filed his original complaint in Washtenaw County. Plaintiff's sole claim on appeal is the court erred in dismissing plaintiff's action. This Court's review of a decision regarding a motion for

summary disposition under MCR 2.116(C)(7) is de novo. *Horace v Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). We find no error.

The tolling statute, MCL 600.5856, provides in relevant part:

> The statutes of limitations or repose are tolled:
>
> (a) At the time the complaint is filed and a copy of the summons and complaint are served on the defendant.
>
> (b) At the time jurisdiction over the defendant is otherwise acquired.
>
> (c) At the time the complaint is filed and a copy of the summons and complaint in good faith are placed in the hands of an officer for immediate service, but in this case, the statute is not tolled longer than 90 days after the copy of the summons and complaint is received by the officer.

Plaintiff does not dispute that these statutory conditions were not met in this case. Accordingly, like the trial court, we must conclude that the Washtenaw County suit did not further toll the running of the limitations period and plaintiff's June 4, 1999, Court of Claims action was time-barred.

We acknowledge plaintiff's argument that tolling should be allowed on equitable grounds because defendant had timely notice of the lawsuit when it received the notice of intent in October 1998. While plaintiff correctly observes that the tolling statute should be liberally construed to allow litigation of apparently valid claims of which the defendant has timely notice, *Sanderfer v Mt Clemens General Hosp*, 105 Mich App 458, 461; 306 NW2d 322 (1981), the notice of intent did not put defendant on notice that it would actually be sued. To construe the tolling statute as plaintiff asks this Court to do would be to read out its specific and unambiguous requirement that, for a prior suit to toll the limitations period, the plaintiff must have served the defendant with a copy of the complaint and summons or taken steps to effectuate service in the prior action. Because we must give effect to every phrase, clause, and word in a statute, we decline to so read the statute. *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra